REMARKS

This responds to the Office Action dated July 1, 2009. No claims are amended, no claims are currently canceled, and no claims are currently added. As a result, claims 68-143 and 246-263 remain pending in this application.

§ 103 Rejection of the Claims

A. The Rejection over Florin and Hendricks

Claims 68-78, 82-83, 85-94, 97-104, 106-116, 120-121, 123 -132, 135-142 and 246 - 263 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florin (U.S. Patent No. 5,583,560) in view of Hendricks (U.S. Patent No. 5,990,927).

As to the distinctions to be discussed herein, Claim 68 is illustrative of reads as follows:

A method comprising:
    using a server to transmit to a client both a television program and a computing application comprising executable code, the executable code to be executed at the *client to cause display of interactive information associated with the television program while the television program is being displayed at the client*, the interactive information to show or describe an item to a television viewer;
    detecting, at the server, a signal representing a viewer interaction with the interactive information, the viewer interaction indicating a selection of the item; and
    in response to the viewer interaction, causing an order for the item to be placed.

The Office Action states that "Florin teaches using a server to transmit to a client both a television program and a computing application,"[1] citing Florin at column 8, lines 52-54 for support. However, the cited passage merely describes the A/V connect module that receives "analog audio-visual signals and digital data from a plurality of audio-visual sources, including the T/T cable 52, the video cassette recorder (VCR) 56, or the other A/V devices 57 . . ."[2] The Office Action makes no attempt to explain why the reference to mere "digital data" is considered as correlating to "a computing application" recited in claim 68. The term "digital data" only

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[1] Detailed Action, page 2.
[2] Detailed Action, page 2; Florin at column 8, lines 52-55.

appears 4 times in the Florin specification,[3] and no reference suggests that it means anything other than audio/video data in digital form; and no passage suggests executable code.

Further, the Office Action draws a distinction that is very difficult to parse-that Florin discloses a "computing application,"[4] but does not "teach the presence of executable code."[5] The claim limitation of "computing application including executable code" is meant to expressly establish what is inherent in the art, that a computing application that is to be executed inherently includes executable code. Otherwise, the instructions of the program would not be executable. The Office Action therefore attempts to draw a distinction that does not exist. If Florin does not disclose executable code (as admitted in the Office Action), then it does not disclose a computing program that can be executed at the client (as required by claim 68).

Further, because Florin does not teach a transmission comprising executable code (as is correctly stated by the Office Action[6]), Florin does not disclose either any functionality of transmitted executable code or any operations dependent on that transmitted executable code functionality. However, claim 68 expressly recites both. Claim 68 recites functionality of the executable code: "code to be executed at the client to cause display of interactive information associated with the television program;" and further recites specific acts occurring in response to that functionality: "detecting, at the server, a signal representing a viewer interaction with the interactive information." Neither of these limitations is disclosed in Florin.

The Office Action cites Hendricks to show "executable code." Hendricks descries a set top terminal that may be upgraded with a so-called "interactive unit."[7] An interactive unit, explains Hendricks, may include a high volume local storage capacity such as a CD-ROM shown in Fig. 12a. This unit in Hendricks allows the use of interactive multi-media applications, such as, e.g., computer games and educational software. Hendricks states that many of these applications will interact with live programming providing additional information and interactivity to the basic program feed. For example, a viewer watching a show set in a foreign

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[3] Florin, col. 8, line 53; col. 9, lines 15 and 39, and col. 10, line 23.
[4] Office Action, page 2.
[5] Office Action, page 4.
[6] Office Action, p. 4.
[7] Hendricks, col. 26, lines 9-16.

country may be able to retrieve additional information about that country that is stored on the

CD.[8]

A review of Hendricks makes clear that any software applications that may be stored in a

CD-ROM are not transmitted to client together with a television program. Thus, even assuming

–solely for purposes of argument-- that there could be some motivation to combine the teachings

of the two references (which is not in any way conceded), combining the system of Florin

(transmitting audio-visual signals and digital data) with that Hendricks (accessing software

applications locally stored at a set top box) still fails to disclose any source transmitting both a

television program and a computing application with executable instructions to a client. Thus,

even if the combination is made, it does not disclose or suggest "using a server to transmit to a

client both a television program *and a computing application comprising executable code*, the

executable code to be executed at the client to cause display of interactive information associated

with the television program while the television program is being displayed at the client," as

recited in claim 68, and thus cannot render claim 68 and its dependent claims obvious.[9] Claims

87, 101, 106, 125, 139, and their respective dependent claims, as well as claims 246-248 and

253-263 are patentable for at least the reasons articulated above. Accordingly, Applicants

respectfully request reconsideration and withdrawal of the rejection of the identified claims.

    B. *The Rejection over Florin, Hendricks and Coddington*

    Claims 79 -81, 95-96, 117-119 and 133-134 were rejected under 35 U.S.C. 103(a) as

being unpatentable over Florin, patent number: 5,583,560 in view of Hendricks (U.S. Patent No.

5,990,927) in further view of Coddington (U.S. Patent No. 5,410,343). Claims 79-81, 95-96,

117-119 and 133-134 depend, directly or indirectly, from claims 68, 87, 106, and 125,

respectively, and therefore all depend from an independent claim discussed relative to the prior

rejection, each of which is believed to have been shown to be patentable over the applied

references. Thus each of rejected claims 79 -81, 95-96, 117-119 and 133-134is allowable, at

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[8] Hendricks, col. 27, lines 23-40.
[9] *KSR v. Teleflex*, 82 U.S.P.Q.2d at 1395 (2007) ("A rationale to support a conclusion that a claim would have been obvious is that *all the claimed elements were known* in the prior art . . .").

least, as depending from an allowable independent claim. Applicants therefore request the
reconsideration and withdrawal of this rejection of claims 79-81, 95-96, 117-119 and 133-134.

        C.   *The Rejection over Florin, Hendricks and Banker*

        Claims 84, 105, 122 and 143 are rejected under 35 U.S.C. 103(a) as being unpatentable
over Florin (U.S. Patent No. 5,583,560) in view of Hendricks (U.S. Patent No. 5,990,927) in
further view of Banker (U.S. Patent No. 5,485,221). Again, claims 4, 105, 122 and 143 depend
from claims 68, 87, 106, and 125 respectively and each is therefore allowable at least as
depending from an independent claim that has been shown to be allowable by this response.
Applicants therefore request the reconsideration and withdrawal of this rejection of claims 84,
105, 122 and 143.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4052 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date _____ November 1, 2009 _____ By ____ /Elena Dreszer/ _____

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